

REMARKS/ARGUMENTS

Claims 1-37 were rejected under §103 as being unpatentable over Wenger and Hauck et al and in view of Martin et al and Griffith et al, and further in view of Miller et al, Fritz-Jung, and Spanier with Wang and Weyn.

Claims 1-13 have been cancelled. The remaining independent claims include Claims 14, 21, 28, 29, 30, and 37. Independent Claim 14 has been amended to further recite the step of scouring the grain to de-fat the grain. Independent Claims 21 and 30 have been amended in the same manner as independent Claim 14.

With respect to Claims 14, 21, and 30, it is believed that these Claims now clearly distinguish over the prior art of record. Each of the references cited in this rejection under §103 are at least deficient with respect to disclosing use of a de-fatted milo grain. Wenger is specifically directed to a method of extrusion, and has absolutely no disclosure regarding de-fatting of a milo grain prior to extrusion. The Martin references are directed to a method and apparatus for de-hulling milo. However, there is no disclosure in the Martin references regarding removal of the fatty-germ of the grain; rather, these references are entirely directed to simply de-hulling the grain. It is noted in the present application that the claimed scouring step is directed to de-fatting the grain, while the claimed decorticating step is directed to removing the hull of the grain. In the Martin references, the scouring step relates to de-hulling of the grain, and there is no disclosure that this scouring step results in removal of the fatty-germ part of the grain. The Hauck et al reference is directed to a twin screw extruder with conical non-parallel converging screws. There is clearly no disclosure in the Hauck et al reference regarding anything related to

processing of the milo grain or in the fatty endosperm of the grain is removed. With respect to the Griffith et al reference, this reference does not teach or disclose extruded grains and rather discloses milling of grains. It is further noted in Griffith et al that in terms of general processing of grains, there is no de-fatting step and rather, the grain is de-germinated which involves fracturing the endosperm and attaching the germ therefrom (see column 1, lines 47-57). Thereafter, the resulting mixture is sifted and the prime product to be retrieved is the actual endosperm. In the invention of independent Claims 14, 21, and 30, there is no fracturing of the grain, and the retrieved "prime product" is simply the de-hulled and de-fatted grain, including the remaining components of both the endosperm and germ. The Miller et al, Fritz-Young et al, Spanier, Wang, and Weyn references each are also deficient with respect to disclosing de-fatting of the grain. With respect specifically to the Miller et al reference, this reference discloses extruding/cooking a mixture, drying the mixture, grinding the mixture, mixing the grinded product with a starch adhesive, and pressing the resulting mixture into the final bone shape. With respect to the Fritz-Young et al reference, this reference discloses mixing an ingredient such as meat, grain, etc., extruding the mixture, creating flakes from the extrusion, grinding, re-extruding, drying, and then spray coating/dusting the dried extrudate. Spanier simply discloses extrusion and baking. Wang and Weyn simply disclose some type of extrusion of a product which incorporates milo. Therefore, independent Claims 14, 21, and 30 distinguish over these references.

Independent Claims 28, 29, and 37 require the step of removing the starch from the grain, and then combining the removed starch with an additive creating a starch mix. Accordingly,

Application No. 10/798,008

these claims are directed to another embodiment of the present invention as explained at page 7, lines 8-20. Although the cited references as whole may disclose de-hulling of the grain and other processing steps, none of the references disclose the step of removing the starch from the grain and then combining the removed starch with an additive creating a starch mix. It should be noted that simply de-hulling the grain does not also inherently result in removing the starch from the grain, since the remaining part of the grain after de-hulling includes a starch component. Again as mentioned in the application at page 7, an additional step is required which is to remove the starch from the grain or tubar, the removed starch typically being in powder form.

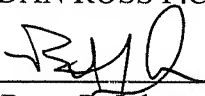
Claims 1-37 were provisionally rejected under obviousness type double patenting based upon claims 1-15 of the co-pending application Serial No. 10/431,490 in view of Miller et al, Fritz-Young et al and Spanier with Wang and Weyn. In order to overcome this obviousness type double patenting rejection, enclosed herewith is a Terminal Disclaimer.

Applicant has made a sincere effort to place the application in a condition for allowance; therefore, such favorable action is earnestly solicited. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: _____


Brent P. Johnson
Registration No. 38,031
1560 Broadway, Suite 1200
Denver, Colorado 80202-5141
(303) 863-9700

Date: _____

6/21/06